

Derek Kirk

Name

P.O. Box 7000

Carson City, NV 89702

1109593

Prison Number

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Derek Kirk,
Plaintiff,

vs.

Washoe County,

Corizon Health, Inc.,

Scott Butler,

Clinton Swaim,

Joseph Lear,
Defendant(s).

CASE NO. 3:13-cv-00296-RCJ-WGC
(To be supplied by the Clerk)

AMENDED
CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983
JURY TRIAL DEMANDED

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, Derek Kirk,
(Print Plaintiff's name)

who presently resides at Northern Nevada Correctional Center were

violated by the actions of the below named individuals which were directed against

Plaintiff at Washoe County Detention Facility on the following dates
(institution/city where violation occurred)

2-6-13, 11-29-12, and 2-22-12-3-14-13
(Count I) (Count II) (Count III)
AND IV

**Make a copy of this page to provide the below
information if you are naming more than five (5) defendants**

2) Defendant Washoe County resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
 and is employed as Detention Facility. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Detention Facility

3) Defendant Corizon Health, Inc. resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
 and is employed as Prison health care provider. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Prison health care provider

4) Defendant Scott Butler resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
 and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Jail Correctional Office Badge no. 3487

5) Defendant Clinton Swaim resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
 and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Jail Correctional Officer Badge no. 1616

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant Joseph Lear resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 3319

3) Defendant Chad Ross resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 2915

4) Defendant Daniel Wheeler resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 2013

5) Defendant Robert Russo Jr. resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 3136

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant Kelle Seely resides at W.C. Sheriff's Office.
(full name of first defendant) (address if first defendant)
and is employed as Sergeant. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 2055

3) Defendant Evans resides at W.C. Sheriff's Office.
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer

4) Defendant Wendy Leonard resides at W.C. Sheriff's Office.
(full name of first defendant) (address if first defendant)
and is employed as Sergeant. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer

5) Defendant Brian Foster resides at W.C. Sheriff's Office.
(full name of first defendant) (address if first defendant)
and is employed as Sergeant. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 989

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant Ransford Vawters resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 2270

3) Defendant James Riggs resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 3024

4) Defendant John Doe 1 resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer

5) Defendant Mark Kester resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 3405

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

- 2) Defendant Amy Youngblood resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 3290

- 3) Defendant Denise Genio resides at W.C. Sheriff's Office,
(full name of first defendant) (address if first defendant)
and is employed as Deputy Sheriff. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Jail Correctional Officer Badge no. 1553

- 4) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: _____

- 5) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: _____

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

B. NATURE OF THE CASE

1) Briefly state the background of your case.

Between the dates of February 22nd, 2012 and March 14th, 2013 I was held in the Washoe County Detention Facility as a pre-trial detainee.

• During this confinement I was subjected to multiple instances of Excessive Force by officers. Other officers failed to intervene and protect me.

• Officers were deliberately indifferent to my serious medical needs.

• I was subjected to conditions for which the totality of amounted to Cruel and Unusual Punishment.

• I wasn't afforded Due Process.

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: Excessive Force was applied to me in violation of the Eighth Amendment. Officers were deliberately indifferent to my serious medical needs in violation of the Eighth Amendment.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On or about February 5th, 2013 Deputy Butler refused me breakfast telling me "when you act right you'll get fed." On February 6th I refused to remove my hand from the food slot of my cell door to prevent it from being locked until I recieved my rations. When Butler arrived at my door he told me "Move your fucking hand" as he grabbed hold of the door slot. I refused. He pushed the slot against my fingers and increasingly applied force, pinching my fingers, while he gave me a sadistic gaze and yelled at me. I maintained my refusal. Butler then quickly stepped back and kicked the door on my fingers using the heel of his boot. As I was screaming Butler told me "Next time you'll move your hand when I tell you to, wont you."

My hand was clearly in need of immediate medical attention. Yet Butler refused my pleas for medical saying "When I get around to it." Butler then ignored my demand to speak with his Supervisor. I later saw medical, a C.S.I. was conducted, and I was interviewed and audibly recorded by Sgt. Leonard and

John Doe 1 regarding this incident.

On Butler's next shift (later that night) Butler again refused me medical care when I asked to see a nurse about the extreme pain I was in. To get the attention of the Area Control Tower and essentially a supervisor to secure medical attention; I covered my cell's camera. When Deputies Butler, Ross, Wheeler and Lear entered my cell they ignored my pleas for medical care and instead proceeded to cornering me onto my bed. They put knees into my back so hard I could hardly gasp for air. I was cuffed behind my back and drug to the cement ground. Knees again crushed my back and head to the ground causing me to lose consciousness. When I regained consciousness officers were asking me if "I'd had enough yet." I was then drug backward into the hallway with my pants at my ankles by Wheeler and Lear. Officers including Sgt. Seely ignored my pleas to loosen the handcuffs. Wheeler and Lear then played tug-of-war with my wrists (causing permanent nerve damage and scarring in the shape of handcuffs.) Wheeler and Lear then picked me up by my legs and threw me headfirst to the ground. Deputies Butler and Russo joined Wheeler and Lear in pinning me to the ground so hard that I went in and out of consciousness several times before coming to with my head pinned to the ground in a puddle of vomit. I was then put in a wheel chair

and pushed to the medical unit. Deputy Vawters then put a bag over my head and pushed my head backward pressing his fingers under my cheekbone very hard; creating pain and making breathing difficult. After being medically cleared I was tied to and left in a restraint chair for several hours before being untied and locked in a "Strip cell" for more than 24 hours.

Sgt. Seely was present and supervising this incident, yet failed to intervene and protect me when force became excessive.

Deputy Evans was also present yet failed to intervene and protect me when force became excessive. After this incident Evans told dozens of inmates "Don't bite the hand that feeds you" and "You didn't see a thing."

Given that Sgt. Leonard and John Doe 1 interviewed me regarding Butler's excessive force in smashing my hand, and were made aware of my fear of Butler and the risk of him harming me further; they had a duty to take action to ensure my safety. They took no such action, leaving Butler as the sole officer in charge of me on the next shift. Shortly after Butler's arrival he again refused me medical attention and used further excessive force. Butler continued to be in charge of me for the next five weeks I was in the facility.

On February 9th I filed a grievance stating I was beat up, had been threatened that worse would occur, that I wished to be interviewed regarding this, and that I wished to press charges.

On February 18th Sgt. Foster denied my grievance and defended officers by saying "This incident is not a crime..." Given that Foster was aware of what had recently occurred with me and that he then knew of my report that I had been threatened with serious physical harm; he had a duty to take action to ensure my safety. He took no such action. Effectively showing that Sergeant Foster did not care if I had been threatened, or if his officers physically harmed me.

COUNT II

The following civil rights has been violated: Excessive Force was applied to me in violation of the Eighth Amendment.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On November 29th, 2012 Deputy Swaim refused me a blanket necessary to protect me from the frigid room temperature, telling me "When you act like a man I'll give you a blanket." I demanded to speak to a supervisor and was refused. In a desperate attempt to get the attention of a supervisor, I flooded the outside of my cell. Swaim blocked the outside of my door with a blanket. As I was pulling the blanket into my cell Deputies Swaim, Vawters and Riggs entered my cell to remove the blanket. I was thrown to the ground and restrained. While I was restrained Swaim held his taser one foot from my face, turned it's laser on and pointed the laser in my eyes. He then told me "I'm gonna shoot you if you keep this up."

Vawters and Riggs failed to protect me by not intervening and disarming Swaim.

COUNT III

The following civil rights has been violated: I was subjected to Cruel and Unusual Punishment in violation of the Eighth Amendment.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Between the dates of February 22nd, 2012 and March 14th, 2013 I was held in the Washoe County Detention Facility as a pre-trial detainee. During this detainment I was subjected to many conditions and physical confrontations for which the totality of constituted Cruel and Unusual punishment.

* The food was far below nutritional standards. The facility serves food labeled "Not For Human Consumption." During my detainment I lost a quarter of my body weight and became very ill. Medical staff told me I was on the verge of dying due to my dramatic weight loss. Corizon Health's policy on Special/double food portions is medically unacceptable. Their policies prevented medical personell from intervening sooner.

* I was constantly subjected to very cold conditions as low as a documented 42° degrees (daytime) not counting wind chill. I was never allowed an extra blanket. And at times I was refused a blanket at all (Deputy Swaim on 11-23-12, Sgt. Seely

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? ____ Yes ☒ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

on 2-6-13, and Washoe County.) Shower water is unreasonably cold. At times I was refused showers for a week at a time.

- At times I was forced to sleep on metal or concrete floors with a hole in the ground feet from me, representing a toilet that is unflushable. All with no mattress or blanket (Deputy Swaim on 11-29-12, Sgt. Seely on 2-6-13, Washoe County all other instances)

- I was always forced to eat next to a toilet with no cover.

- My cells were constantly brightly illuminated; which severely interfered with my sleep.

- I was always in dirty clothes/linens because the facility only washes once a week and only issues one set of clothes/linens, making handwashing impossible.

- For about four months (Dec., Jan., Feb., March 2013) I was only allowed out of my cell (into a slightly bigger room) for one out of each forty-eight hours. For about three months (Jan, Feb., March 2013) I was never allowed outdoors ("yardtime") For these three months I didn't see the sky/sun or breath fresh air.

- I wasn't allowed to write or receive letters, and phone prices are outrageously overpriced; making contact

with family a rare occasion. I was isolated from other inmates. Therefore I had no meaningful human contact.

The totality of these conditions as well as the accounts of excessive force exasperated my Post Traumatic Stress Disorder, made me highly depressed and even suicidal.

This is outrageous treatment of anyone, let alone a citizen who's a mere suspect of a crime.

* The above points are against Washoe County's Department of Detention due to their written or unwritten policies/customs, unless otherwise noted.

* Corizon Health Inc. was formerly known as Prison Health Services Inc. Corizon Health was the facilities contract provider of medical services.

COUNT IV

The following civil rights has been violated: My right to Due Process as guaranteed by the Fourteenth Amendment has been violated.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Between the dates of February 22nd, 2012 and March 14th, 2013 I was wrote up more than 50 times alleging more than 100 rule violations. This resulted in the loss of liberties, including about four months in punitive segregation (Nov. 2012 - March 2013), an enhanced prison sentence, etc. Yet I was seldom afforded Due Process for these allegations.

Sgt. Foster and Deputies Kester, Youngblood, Genie conducted the hearings and paperwork causing these liberty deprivations without proper Due Process.

On February 8th, 2013 Sgt. Foster and Deputies Youngblood, Kester conducted a disciplinary hearing. I was not given advance notice of the charges to allow me to prepare my defense. I was refused the opportunity to call witnesses or obtain written statements from them. I was told I "will accept this as my hearing or I will have none at all."

On February 7th Foster approved punitive punishment to begin on February 9th (before I'd even heard of the charges

against me, or had a hearing.) This may be able to show either the facility or officials have a custom which violates inmates Due Process rights, or an instance of retaliation.

outline).

- a) Defendants: _____
- b) Name of court and docket number: _____
- c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**
____ Yes ☒ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (check one): _____ frivolous
_____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____

- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes ☐ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) _____ disciplinary hearing; (2) _____ state or federal court decision; (3) _____ state or federal law or regulation; (4) _____ parole board decision; or (5) _____ other _____.
- If your answer is "Yes", provide the following information. Grievance Number 1902, ETC.
 Date and institution where grievance was filed 2-16-13 W.C. Detention Facility

Response to grievance: "... You have 72 hours to grieve"

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

A Declaration that the acts and emmissions described
herein are violative of the Constitution and the laws of
the United States.

Compensatory and Punative damages.

Recovery of costs in this suit.

Any additional relief this court deems just, proper,
and equitable.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped
prepare this complaint if not Plaintiff)


(Signature of Plaintiff)

July 4th, 2014
(Date)

(Additional space if needed; identify what is being continued)